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# Supreme Court of the United States

OCTOBER TERM, 1940

No. 902

ARMATURE EXCHANGE INCORPORATED, a corporation, also known as THE ARMATURE EXCHANGE, a corporation, also known as THE ARMATURE EXCHANGE INCORPORATED, a corporation,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

**Petition for a Writ of Certiorari to the United States Circuit Court of Appeals, Ninth Circuit and Brief In Support Thereof.**

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1940

No. .....

ARMATURE EXCHANGE INCORPORATED, a corporation, also known as THE ARMATURE EXCHANGE, a corporation, also known as THE ARMATURE EXCHANGE INCORPORATED, a corporation,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

*To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:*

Petitioner, The Armature Exchange, respectfully shows to this Honorable Court that this is a petition for a writ of certiorari to the Circuit Court of Appeals, Ninth Circuit, to review a decision made and entered by this court on January 17, 1941, reversing the decision of the District Court of the United States for the Southern District of California, Central Division.

**Summary and Short Statement of the Matter Involved.**

This suit was instituted to recover $1,452.30 in excise taxes assessed and paid under section 606 (c) of the Internal Revenue Act of 1932 [R. Vol. 1, p. 2], on the sale of rewound automobile generator armatures. The part of the above statute which is applicable to this suit reads as follows:

> "Section 606. Tax on automobiles, etc. There is hereby imposed upon the following articles sold by the manufacturer. producer, or importer, a tax equivalent to the following percentages of the price for which so sold: * * *
>
> "(c) Parts or accessories (other than tires and inner tubes) for any of the articles enumerated in subsection (a) or (b), 2 per centum. * * *." (Note—Subsection (a) and (b) referred to enumerate automobiles, automobile trucks and motorcycles.)

The tax was assessed by the Commissioner of Internal Revenue on the theory that the petitioner was the manufacturer or producer of the armatures which it repaired by rewinding and later sold. In ninety-five per centum of the transactions the petitioner exchanged armatures which it had repaired by rewinding, for burned out armatures of an identical type and an additional cash consideration for their repair service.

The mechanics of rewinding the armatures is in brief as follows:

Armatures on which the wiring has been burned out or damaged were repaired by removing the burned out or damaged coils of copper wire and replacing same with new wire and proper insulation. Ninety-five per centum of the damaged armatures were received from plaintiff's

customers [R. 97] who would exchange them for armatures of the identical type which had previously been repaired, appropriately identified, and placed in petitioner's stock of rebuilt armatures maintained for the convenience of its customers. The remaining five percent were purchased from dealers in secondhand armatures. [R. 97.] In repairing the armatures the only part removed was the wire winding. [R. 75-76.] Said armatures were not further dismantled and the original identification marks were not removed. [R. 11.]

The District Court held as evidenced by its opinion [R. 11] that the tax was improperly assessed by reason of the fact that the petitioner was not the manufacturer or producer of the armatures involved, but only the repairer thereof.

The United States Circuit Court of Appeals for the Ninth Circuit reversed the judgment of the District Court, holding that the operations of petitioner in the rewinding and selling of said armatures constituted manufacturing or producing within the meaning of the statute involved. [R. 122.]

The Armature Exchange filed a petition for rehearing on February 15, 1941, which was denied on February 18, 1941. [R. 130.]

## Question Involved.

Whether sales of automobile generator armatures which had been repaired by rewinding same were taxable under section 606 (c) of the Internal Revenue Act of 1932, imposing a tax upon automobile parts, "sold by the manufacturer, producer or importer."

## REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

### 1. The Circuit Court of Appeals for the Ninth Circuit Has Decided an Important Question of Federal Law Which Has Not, But Should Be Settled by This Court.

Section 606 (c) of the Internal Revenue Act of 1932 has been construed by seven different United States District Court judges in deciding eight cases adversely to the government, four of these cases involved rewound armatures, three involved rebabbitted connecting rods, and one case involved both of said items. *Hempy-Cooper Manufacturing Co. v. United States,* C. C. H., 1937 Standard Federal Tax Service, Vol. 4, para. 9421; *Monteith Bros. Company v. United States,* C. C. H., 1936 Standard Federal Tax Service, Vol. 4, para. 9492; *Bardet v. United States,* C. C. H., 1938 Standard Federal Tax Service, Vol. 4, para. 9530; *Becker-Florence Co. v. United States,* C. C. H., 1939 Standard Federal Tax Service, Vol. 4, para. 9259; *Moroloy Bearing Service Co. v. United States,* C. C. H., 1940 Standard Federal Tax Service, Vol. 4, para. 9619; *J. Leslie Morris Co., Inc. v. United States,* C. C. H., 1940 Standard Federal Tax Service, Vol. 4, para. 9608; *Con-Rod Exchange, Inc. v. Henricksen,* 28 Fed. Supp. 924; *Armature Rewinding Co. v. United States,* C. C. H., Standard Federal Tax Service, Vol. 4, para. 9691.

Several of the above cases are not reported in the National Reporter System. For the convenience of this

court the decisions in these cases taken from Commerce Clearing House Standard Federal Tax Service is set forth in the appendix to this brief.

Two of the above cited cases, namely, *The Armature Rewinding Company v. United States* and *J. Leslie Morris Company v. United States,* are on appeal to the United States Circuit Court of Appeals for the Eighth Circuit, and for the Ninth Circuit, respectively. The decision of the question involved in the instant case will ultimately affect and probably determine the final decision of the two cases last mentioned and it is believed will affect many other cases in the various courts of the United States. The question is one which should be decided by this Honorable Court to prevent a multiplicity of suits and to insure uniformity of application of the taxing statute here involved.

**2. The Circuit Court of Appeals for the Ninth Circuit Has Decided an Important Question of General Law in a Way Probably Untenable or in Conflict With the Weight of Authority.**

The Circuit Court of Appeals for the Ninth Circuit has decided that the rewinding of burned out or damaged automobile generator armatures constitutes manufacturing or production of automobile parts within the purview of section 606 (c) of the Internal Revenue Act of 1932.

This decision is in conflict with the weight of authority as announced in decisions of this Honorable Court as well as decisions of the United States Circuit Courts of Appeals, United States District Courts and the State Courts.

The question of what constitutes manufacturing has been decided by the courts many times in the past. One of the leading cases is *Anheuser-Busch Brewing Association v. United States,* 207 U. S. 556. In deciding the case Mr. Justice McKenna said in part:

> "There must be transformation; a new and different article must emerge, having a distinctive name, character or use! This cannot be said of the corks in question. A cork put through the claimant's process is still a cork."

See also *Cadwalader v. Jessup and Moore,* 149 U. S. 350; *Wilson v. Simpson,* 9 Howard 109; *Thurman, Collector v. Swisshelm, et al.* (C. C. A. 7), 36 Fed. (2d) 350; *Foglesong Machinery Co. v. Randall Co.* (C. C. A. 1), 112 Fed. 893; *Hughes v. City of Lexington,* 277 S. W. 981; *State v. J. J. Newman Lumber Co.,* 59 So. 923.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on this docket, No. 9469. "United States of America, Appellant, v. Armature Exchange Incorporated, a corporation, also known as The Armature Exchange, a corporation, also known as The Armature Exchange Incorporated, a corporation, Appellee," and that said judgment of the said United States Circuit Court of Appeals for the Ninth Circuit, may be reversed by this Honorable Court and that the judgment of the District Court of the United States for the Southern District of California, Central Division, be affirmed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and proper.

Dated: This 27th day of March, 1941.

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